Ordoliberal Lessons for Economic Stability: Different Kinds of Regulation, Not More Regulation

Mathias M. Siems and Gerhard Schnyder*

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Abstract: Since the Global Financial Crisis that started in 2008, the term "ordoliberalism" has experienced a marked revival. Academics and politicians of all couleurs have recently referred to ordoliberalism as a possible way forward. Others have held ordoliberalism responsible for Germany's intransigent stance in the Euro rescue. However, most references use ordoliberalism merely as a shorthand for "liberalism with the state" or anti-inflationary macro-economic policy. Few have attempted to get at the heart of the ordoliberal theory of market regulation. This paper seeks to clarify the ordoliberal position in order to revisit current references to this theory. We argue that the ordoliberal distinction between market conforming and non-conforming state intervention holds some lessons for current debates about economic regulation. In particular, we focus on the Financial Crisis from an ordoliberal perspective and assess its relevance in the current context and its implications for regulatory reform.

Keywords: ordoliberalism; liberal theory; institutional economics; financial crisis, financial regulation, Eurozone crisis

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Introduction

Niall Ferguson and Sarah Wagenknecht are certainly strange bedfellows. The political stance of the British-born Harvard professor Niall Ferguson can best be described as neo-conservative, having been a consultant for the US Republican Party and a contributing editor for the Sunday Telegraph and the Financial Times. Sarah Wagenknecht, by contrast, is a Member of the German Parliament for the Left Party (*Linkspartei*), usually adopting a neo-communist point of view, as illustrated by her long-term membership in a communist sub-committee of the Left Party (*Kommunistische Plattform*).

What they have in common, is that both have recently been seduced by ordoliberalism. At a meeting of the pro-market Mont Pèlerin Society, Ferguson suggested to rediscover the ordoliberal idea of an effective order of competition "before Keynesian economists will succeed to turn the wheel of history backwards" (cited in Plehwe 2010, 13). Wagenknecht, in turn, employs the concept of ordoliberalism in order to criticise the *laisser faire* approach of modern capitalism holding the latter responsible for the current financial crisis. In her book "Freedom, not Capitalism" (*Freiheit statt Kapitalismus*, Wagenknecht 2011) she praises ordoliberalism for reconciling the market economy with the public interest and for limiting the power of big corporations. In her view this should be the basis for a new type of socialism (what she calls *kreativer Sozialismus*): a market economy without capitalism and socialism without a planned economy.

Thus, both sides – Left and Right – seem to regard ordoliberalism as a way forward. The apparent reason is that even moderate conservatives, such as Richard Posner now believe that some brands of economic liberalism may have gone too far in their rejection of the state (see Posner 2009, 236: "laissez faire capitalism failed us"). Beyond such normative claims this debate can be related to some contemporary features of state activity, notably regulation. Libertarian understandings of the economy that conceptualised markets as the result of "depolitisation", i.e. they emerge naturally once the state is "rolled back", are challenged by Vogel's (1996) well-known observation that neoliberal policies often had the seemingly paradoxical effect of increasing rather than reducing regulatory density: in other words, freer markets often require more rules. The term "regulatory capitalism" was coined to describe this new situation (Braithwaite 2008). This has led authors in the field of regulation studies to conclude that deregulation was a “revolution that wasn’t” (Levi-Faur 2006, 506), and others have even confidently affirmed that “Regulatory Capitalism is not about neoliberalism, indeed […] those who think we are in an era of neoliberalism are mistaken” (Braithwaite 2005, iv).

In this paper, we show that both views reveal a somewhat superficial understanding of the role of the state. Ordoliberalism is often invoked in order to promote an economic order that maintains liberal traits, but leaves room for state intervention. Yet, the ordoliberal theory of state intervention is more sophisticated than most references to it suggest. Indeed, the above-mentioned views are largely based on a rhetorical, even a rather naïve, use of the concept of ordoliberalism, essentially equating it with “liberalism plus the state”, with Ferguson emphasising the “liberalism” aspect and Wagenknecht emphasising the “state” one. Yet, we argue that the renewed interest in ordoliberalism has the benefit of allowing once again a more thoughtful debate about the relationship between liberalism, state activity and economic regulation. While the ordoliberal conception does not necessarily suggest a solution to the current problems in the short run, in the long run ordoliberalism may form the basis for a sounder conception of state regulation in the economy than more libertarian views can offer.

In so doing, the paper aspires to contribute to the discussion about “the contours of the post-crisis governing agenda” (Froud et al. 2012, 35), notably the question: “(i)f the old orthodoxy has been shaken, what is likely to replace it?” (Coen and Roberts 2012, 7). While it is not possible to investigate whether an ordoliberal regulatory regime would have allowed it to prevent the Global Financial Crisis (in the following: GFC), clarifying its main theoretical claims and intellectual precepts constitutes a first step towards formulating alternative understandings of the relationship between state regulation and the economy.

The paper is structured as follows. The first main part explains the central ideas of ordoliberalism, as developed in Germany in the first half of the 20th century. We also provide examples of how these ideas have had a practical impact in areas such as European competition policy. The second main part analyses how an ordoliberal position assesses the causes of the current economic turmoil and possible responses. In particular, it is shown that ordoliberalism does not only suggest a need for regulation but also provides some guidance on its substance. It therefore has distinct normative and substantive features that make it of potential interest today.

Ordoliberalism: theory and practice

Re-visiting the ordoliberal case for regulation requires an understanding of its intellectual foundations. This section sketches the central ideas of ordoliberalism[1] and explains its practical relevance in Europe.

The central ideas of ordoliberalism

The term "ordoliberalism" was first used in a 1950 issue of the review ORDO. Yet, in substance, ordoliberalism already emerged in Germany during the interwar period. The founding fathers were the economist Walter Eucken and the lawyers Franz Böhm and Hans Grossmann-Doerth, all three from the University of Freiburg (thus, also "Freiburg School of Law and Economics", Vanberg 1998). Subsequently, academics from other universities have also contributed to ordoliberal ideas, the main voices having been Wilhelm Röpke, Alfred Müller-Armack and Alexander Rüstow.[2]

Ordoliberalism was at the beginning closely related to a broader international movement for a new liberalism that first met at the foundational Colloquium Walter Lippmann in Paris in 1938. The fundamental novelty of the liberalism presented by Walter Lippmann, whose book "The Good Society" (Lippmann 2005 [1937]) formed the basis for the gathering, compared to classical liberalism is the focus on the market mechanism and the competition principle as the sole ordering principle of economic exchanges. Moreover, it defended the view that markets are not natural givens, but require state intervention to function.

Scholars of the Chicago School maintained the first statement, but moved away from the second (Mirowski and Plehwe 2009). By contrast, the core issue for ordoliberalism lies in the need for adequate state intervention in favour of functioning markets. Drawing on the concept of "*ordo*", the Latin word for "order", ordoliberalism refers to an ideal economic system that would be more orderly than the *laisser faire* economy advocated by classical liberals (Oliver 1960, 133-34). A positive role of the state is seen as crucial in order to create the conditions for a liberal economy. Without a strong government, ordoliberals argued, power differences among private interests would undermine the functioning of markets (Oliver 1960; Boarman 1964; Gerber 1994).

This assessment was based on the experience of the Weimar Republic (1919-1933) during which ordoliberalism emerged. The weakness of the Weimar democracy and its perceived permeability to interest group influence and party politics led early ordoliberals to lean towards a preference for strong government in order to strike an appropriate balance between private and public power (Peck 2010, 59). Röpke, for instance, mentions the example of the Swedish industrialist Ivar Kreuger, also known as the "Match King", who during the interwar years obtained monopoly privileges over match manufacturing in several countries including Weimar Germany in exchange for his taking over national debt. This implied that the private monopoly resulted in this instance, like in most others, from a weak state who indulges in policies that are incompatible with markets not from a natural tendency of markets towards monopolies (Röpke 1950, 230).

Yet, for ordoliberals markets were not any more natural than monopolies. Rather than emerging spontaneously, markets had to be created and maintained by state intervention and regulation. Thus, Röpke (1950, 228) stated that "[t]he freedom of the market in particular necessitates a very watchful and active economic policy which at the same time must also be fully aware of its goal and the resulting limits to its activity, so that it does not transgress the boundaries which characterize a compatible form of interventionism" (our translation). It is this active and interventionist state that has sometimes been referred to as "positive liberalism" and "interventionist liberalism" (cf. Foucault 2004, 138), and it is this rejection of "*laisser faire, laisser passer*", which characterises not just ordoliberalism, but was also the defining element of the ideas presented at the Colloquium Walter Lippmann in 1938 (cf. Röpke 1942; Böhm 1937; Miksch 1949). After the Second World War the Chicago School evolved into a fundamentally different direction, which explains the difficulty to understand the above-mentioned re-regulation trend of the 1990s. For ordoliberals, the statement "freer markets, more rules" would appear perfectly natural. Leonhard Miksch (1949, 327), for instance, supported regulation "[e]ven if the number of corrective interventions that seem necessary turned out to be so large that […] there was no quantitative difference anymore with what 'planners' would wish for […]" (quoted in Foucault 2004: 158, fn. 19; our translation).[3]

State intervention hence very much constitutes one of the core claims of ordoliberalism. The difference with socialist planning was not in terms of quantity of regulation or state intervention, but in its nature. The goal was not to weaken the state, but to direct its intervention into the "right", i.e. market conforming, direction. Indeed, ordoliberals developed a theory of "conform intervention" and "non-conform intervention". The former, is state intervention that does not hamper three fundamental market forces, which are according to Franz Böhm a tendency to reducing costs, a tendency to reduce profits in the long run, and a tendency to increase profits in the short run through cost reductions and increases in productivity (Foucault 2004, 160, fn. 38). The notion of "conform actions" is further developed by Röpke (1950) and Eucken (1952). Francois Bilger (1964) also distinguishes between "regulatory" (*actions régulatrices*) and "ordonnating" state actions (*actions ordonnatrices*). Regulatory actions intervened more directly on market mechanisms and should hence be limited to the goal of price stability, while ordonnating actions aim at creating the pre-conditions for competition and functioning markets. These actions intervene on the "frame" for market activity and should hence be vigorous and extensive.

The ordoliberal theory of "conform intervention" applies to competition policy as one of the main ordoliberal concerns. Ordoliberals believe that the freedom of individuals to compete in markets should be separated from *laisser faire*, the freedom of markets from government intervention. Thus, they favoured a rigorous competition law, but also state intervention in order to "de-concentrate" economic power when a market becomes dominated by one or a few large players. In Eucken's view, market and competition can only exist if a strong state establishes an economic order. The state's role must be clearly delimited; but in the area where the state has a role to play, it needs to be powerful and active in order to create a functioning and humane economic order (Goldschmidt and Rauchenschwandtner 2007; Eucken 1932; Rüstow 1953 and 1957). Also Röpke (1923), at the very beginning of the ordoliberal school of thought, defined the aim of ordoliberals as fighting for "the idea of the state and against the lack of freedom in which private economic monopolies – supported by government leading a shadow existence – keep the economy captive" (quoted in Megay 1970, 425).

Ordoliberalism also stands for a view of the economy, which stressed the need for a market economy to be embedded in a functioning society and the fact that the "market economy constitutes a narrow sector of societal life only" (Röpke 1946, 82-3; cf. Peck 2010, 61). Eucken (1932) used the concept of "interdependence of orders" in order to underscore that the economic order is interdependent with all other governmental, societal and cultural orders in a society. As a consequence, ordoliberals also cared about social issues, though they did not support the provision of universal welfare (Ptak 2009). Peck (2010, 58) even calls this pragmatic and outcome-orientated approach the "first third way", although others object that "[o]rdoliberalism is not a 'third way' between capitalism and socialism; it should be seen as a different form of liberalism" (Vatiero 2010, 706).

More precisely, some ordoliberals such as Alfred Müller-Armack and Alexander Rüstow (1957) have shown sympathy for the idea of social policy and the welfare state as long as it was market-conforming. They rejected "purely material" social policies and developed instead the concept of "*Vitalpolitik*", which should aim at improving people's living standards and wellbeing not just through cash transfers, but by including a transformative structural societal policy (*strukturelle Gesellschaftspolitik*). Contrary to socialist ideas, these policies were not aimed at a social egalitarianism, but rather at stabilising a supposed "natural order" of society where different social strata co-existed. Thus, ordoliberals supported individual mobility with the state being responsible for providing equal opportunities; yet, they did not follow a progressive approach to social questions – something which Wagenknecht (2011) seems to overlook.

One of the main reasons why ordoliberals would object to the socialist type of welfare spending is related to the importance that is given to the concepts of personal responsibility and liability. This is notably expressed in the principle of liability (*Haftungsprinzip*). This principle states that those who benefit from a particular action also have to be liable if things go wrong (e.g., Pies and Sass 2012). By contrast, generous universal welfare transfers are seen as creating negative incentives, reduce personal responsibility and lead to moral-hazard.

The concern for interdependencies between different spheres of society led ordoliberals also to be open to more interdisciplinary approaches than marginalist economics. Röpke explicitly argued for an anthropological-sociological approach to markets and the economy in order to achieve a truly socially-embedded market economy (Peck 2010, 61). Market forces were not seen as universal, absolute principles, but as forces that had to be confined within a given economic order. According to Röpke (1950, 181):

> "[w]e must stress most emphatically that we have no intention to demand more from competition than it can give. It is a means of establishing order and exercising control in the narrow sphere of a market economy based on the division of labour, but no principle on which a whole society can be built. From the sociological and moral point of view it is even dangerous because it tends more to dissolve than to unite. If competition is not to have the effect of a social explosive and is at the same time not to degenerate, its premise will be a correspondingly sound political and moral framework. There should be a strong state, aloof from the hungry hordes of vested interests, a high standard of business ethics, and un-degenerated community of people ready to co-operate with each other, who have a natural attachment to, and a firm place in society". (our translation)

Some US academics based in Chicago at first shared many assumptions and theories of the ordoliberals. For example, like ordoliberals, Henry Simons, professor at Chicago, took the view that the monopoly in all its forms, including large corporations, is "the great enemy of democracy" (Van Horn 2009, 204, 209). But after the Second World War the relationship between ordoliberalism and the Chicago School, now mainly identified with Milton Friedman and Aaron Director, became a more complicated one. There was some agreement and interaction. Both streams of thought did not support a social-democratic welfare state, and both were sceptical of the influence of interests groups on politics. They also communicated and exchanged ideas on a regular basis in the Mont Pèlerin Society, founded by Friedrich von Hayek in 1947 (for details see Mirowski and Plehwe 2009). However, the Chicago School also increasingly diverged from its ordoliberal counterpart as it has increasingly embraced an optimistic view of the play of markets and an increasing suspiciousness of regulation to correct market failures (see Van Horn and Mirowski 2009).

The practical relevance of ordoliberalism in Europe until the GFC

Scholars agree that ordoliberalism achieved some practical relevance in Germany after the Second World War. A notable source of influence was Ludwig Erhard, the German Minister of Economics and an open supporter of ordoliberal ideas. This is not to say that external events may not also have steered some policies in a different direction: for example, the Korean War of the early 1950s and the corresponding recession are said to have fostered corporatism and social welfare policies in Germany (Joerges 2013, 5).

Still, ordoliberalism did play an important role in Germany notably by contributing to a massive exercise of "state building" after the fall of the Nazi dictatorship. It was necessary to establish new state institutions, which would draw their legitimacy on the guarantee of individual political and economic liberty (Lemke 2001; Foucault 2004). This contrasts with US neoliberals for whom the welfare state, which was expanding with Roosevelt's New Deal, became increasingly the main adversary. The fear of "collectivism" and "socialism" was further spurred by the Cold War and the international spread of communism. Thus, while the task of re-building a functioning state prevented the German politics from adopting anti-state views, in the US collectivism and the state were frequently seen as the main enemy of a liberal society.

More specifically, in Germany the active competition policy is one of the areas where the ordoliberal influence is clearest. Franz Böhm's views on this issue strongly influenced the elaboration of the first German Competition Act after the Second World War (see Siems 2004, 37; cf. also Quack and Djelic 2005). The German position differs from the US one, as the former does not only ban cartels and syndicates but also aims for a de-concentration of the industry (see Berghahn and Young 2012, 4-5). By contrast, in the US, "big business" was frequently accepted as a legitimate form of economic organisation, in line with suggestions by the Chicago School that private monopoly power was merely a transitory phenomenon, which will ultimately be eroded by market forces (Director 1951; Friedman 1951; Director and Levi 1956; cf. also Van Horn 2011).

It is often said that ordoliberalism has also been influential in the European Economic Community (EEC, now EU). In particular, ordoliberal ideas are said to have had a strong impact on EU competition policy (e.g., Willks 2005). Yet, this has been challenged by research showing that the European law-maker did not aim at a general prohibition of market power (as ordoliberals would), but only if such power was seen as inefficient (Akman 2012). It has also been suggested that ordoliberal ideas were modified later on, as European competition law turned its attention to anti-competitive state activities and regulatory practices (Joerges 2013, 7-8).

A mixed picture also emerges more generally. Some scholars argue that the EU's economic, social, fiscal and monetary policies are distinctly ordoliberal. According to Joerges (2010 and 2013) this can be seen in the fact that the EU (EEC/EC) was and still is mainly about establishing a non-political economic constitution with social policies being left to the Member States. Similarly, according to Petit (2012) and Bordes and Clerc (forthcoming) the Common Market and the Economic and Monetary Union (EMU) are seen as narrowly prioritising stability with low debt and inflation levels over growth and employment – with the growth-element of the EU Stability and Growth Pact of 1997 only seen as a diplomatic concession (similar Luckhurst 2012, 749; see also Alesina et al. 2005, for the shifting policy focus of the EU).

However, it is debatable whether these policies are all "ordoliberal". Indeed, we should remember that some ordoliberals were from the outset very critical of the European project. For example, Röpke (1959), while in principle favourable to a European integration, strongly criticised most actual policies relating to the European Community and the project of the "common market" as "international collectivism." He argued instead for a minimally regulated economic area based on free-trade and the free convertibility of currencies (cf. Feld 2012).

It is also misleading to attribute everything based on a German design to ordoliberalism. In a number of articles, Bibow (2009, 2012) has shown that ordoliberals such as Eucken would disapprove how the Euro and the European Central Bank (ECB) have been designed. Bibow also explains that Eucken rejected the notion of an independent central bank that has discretion in setting interest rates, which contrasts with the subsequent design of the ECB.

In sum, there is some confusion about what policies are indeed ordoliberal. Central bank independence is not part of an ordoliberal agenda, notably due to its suspiciousness of discretionary politics and its preference for "market conforming" state actions. But ordoliberalism also favours a strong not a weak state, and it does not reject all types of social policies, as opposed to more radical libertarian views. Therefore, some aspects of the EU can certainly be seen as ordoliberal, but others are more closely related to an Anglo-Saxon understanding of liberalism. This modified positioning of ordoliberalism will also be apparent in the next section, dealing specifically with the Global Financial Crisis that started in 2008.

Ordoliberalism in the context of the financial crisis

Many of the ordoliberal works were written in the 1930s, in the wake of the Great Crash of 1929 and several have indeed the crisis as their main theme (cf. Röpke 1950). Therefore, it should come as no surprise that the current crisis has also stimulated interest in a form of liberalism that promotes a more ordered economy. In the 1930s, ordoliberalism did not impact on the policy responses to the Great Depression and most governments quickly turned to protectionism and Keynesian policies. The current political situation however is such that liberal solutions to the GFC may be the only politically feasible ones (Schmidt and Thatcher 2013). This may in part explain the regained appeal of ordoliberalism for many actors. Following the chronology of the crisis this section assesses the immediate responses to the bank failures, reforms of financial regulation and corporate governance, and the Eurozone crisis. Thus, we aim to re-visit the ordoliberal position, while we do not claim that all of these responses are unique to ordoliberalism nor that they are indeed the optimal ones.

Immediate responses to the bank failures

In the early phase of the crisis the governments of different countries felt the need to bail-out major financial institutions (though, initially, Lehman Brothers was allowed to fail). The apparent reason was that some institutions may be "too big to fail" (TBTF). Thus, bail-outs were seen as unavoidable in order to prevent a collapse of the financial system as a whole.

An ordoliberal response to this issue may, on the one hand, be self-righteous about the TBTF problem. One of the core claims of ordoliberalism is that markets have to be regulated in order to minimise market power. Thus, in a perfect ordoliberal world market domination and the problem that some firms cannot be allowed to fail because they are "too big", would not arise – while it may also be objected that the financial crisis has shown that it is not only the size of a firm that matters but also whether it may be "too interconnected to fail" (Roubini and Mihm 2010, 200).

On the other hand, ordoliberals would be sceptical of bail-outs. Ordoliberals approve state regulation but not "experimental economic policy" (Eucken 1952, 311) or discretionary government intervention in moments of crisis (cf. *a contrario* Posner and Vermeule 2009). Moreover, bail-outs create the well-known problem of moral hazard. As far as the banks expect that in the worst case the state will come to rescue, they have no incentives to take the risk of bankruptcy seriously. The moral hazard created by bank bail-outs is regarded as violating the above-mentioned principle of liability (*Haftungsprinzip*), having adverse macro-economic consequences (see Funk 2009; Schäfer 2009). It can hence be safely concluded that bank bailouts would not qualify as "conform state action" from an ordoliberal perspective.

Financial regulation, corporate governance, and ordoliberalism

After the bail-outs, the debate shifted to the causes of the banking crisis and how these should be addressed. The following distinguishes between three problems. First, the crisis has shown the dangers of risky financial instruments, such as asset backed securities, collateral debt obligations, credit default swaps and other types of "structured products". Banks could use innovative financial products in order to repackage loans and transfer the default risks to financial investors, while investors used credit default swaps to protect themselves from these risks. As a consequence, banks and investors became immune against these risks, while creating unpredictable risks for financial markets as a whole (e.g., Crotty 2009; EU Commission 2012, 14).

Second, the financial crisis has been a result of destructive incentives. The decisions by some bankers on granting loans and trading in securitised financial instruments are said to have exclusively focused on short-term gains due to the way in which their bonus payments were structured (Kromphardt 2009). Moreover, banks themselves seemed indifferent towards defaults since, via securitisation, they transferred the default risks to the market, and as a consequence mainly cared about the number of loans, not the likelihood of repayments.

Third, the crisis may be a result of insufficient tools to monitor financial markets and institutions at a global level. Although the crisis has been more severe in some countries than in others (see Konzelmann and Fovargue-Davies 2013), it is evident that the interconnectedness of financial markets has contributed to its spread across borders. It is also not implausible to assume that the core players (banks, institutional investors etc) have engaged in forms of regulatory arbitrage, i.e. that they preferred to locate to legal systems with a "light-touch" approach to regulation.

The ordoliberal response to the first problem of "originate and distribute", i.e. selling loans on repackaged into new securities rather than keeping them on the balance sheet to maturity, is again based on the *Haftungsprinzip.* The types of financial instruments that contributed to the current crisis were not yet a topic for the original ordoliberals. Yet, commentators of recent events agree on the unease that ordoliberals would have felt. According to Richter (2011, 21-22) it is in markets for these instruments where the problem of liability arises most severely, and according to Sinn (2009; see also Sinn 2011, 267) the problem was that:

> "(…) banks, hedge funds, special purpose vehicles, investment funds and real-estate financers were allowed to conduct their business with only tiny amounts of equity capital. Without equity, there is no liability, and without liability, people gamble. (…) Only strict regulations can create the confidence in the markets that capitalism needs to continue to increase the prosperity of the masses. America needs Walter Eucken, the father of ordoliberalism."

What tools precisely does ordoliberalism suggest? It would be against its liberal precepts to prohibit these financial instruments. Rather, a first step would be to make their risks more transparent, for instance, by improved operation of credit-rating agencies. Ordoliberalism would also recommend higher capital requirements, thus eliminating riskless lending in order to induce a more cautious approach to risk-taking (Sinn 2009). Thus, the ordoliberal position would refer to a more pronounced sensitiveness towards the "common good" and hence towards the negative externalities of individual organisations' or actors' behaviour for society at large (see below). In addition, law enforcement needs to be strengthened; in particular, financial supervisors may need to take a more pro-active role in monitoring the inherent risks of financial markets (Aßländer 2011, 37; Kromphardt 2009). Thus, an ordoliberal critique of the situation at the eve of the GFC may well have stated that the state had become too weak to put effective checks on ever more volatile and speculative financial markets and ever larger banks.

Ordoliberalism pre-dates the rise of modern forms of governance, such as public-private networks of regulation. Such new forms of regulation do not sit easy with ordoliberal ideas: according to ordoliberals the state should not become a “weak state” unable to resist the influence of private interests groups (see, e.g., Bonefeld 2012, 640, 642). Thus, while the ordoliberal preference for top-down regulation certainly has its disadvantages, it also reduces problems of accountability inherent in new forms of governance (cf. Lodge and Stirton 2010).

Turning to the second problem, “destructive incentives”, ordoliberalism recognises that individuals may act selfishly. This is not regarded as a problem as such. However, for ordoliberals selfishness can have a destructive effect on markets. In such cases, the law-maker has to intervene in order to align private incentives with the interests of the common good (Funk 2009). This notion of the “common good” suggests, among other things, that ordoliberalism would not support the idea that shareholder wealth creation is the only legitimate goal of corporations (including banks). Rather, societal goals can be legitimately imposed on economic actors by the state.

It is regarding this concept of the “common good” that ordoliberalism has maintained a concern for the “social claims of the masses” first formulated at the Lippmann Colloquium, even leading to some suggestions that it should be called “left liberalism” or “social liberalism” (cf. its minutes, quoted in Foucault 2004, 158, fn. 15). By contrast, the post-war Chicago School rejected the notion of a society beyond the atomistic individual: the incommensurability of individual tastes and preferences would not allow a principle to emerge that would unite society and any notion of a common interest is hence seen as fundamentally anti-liberal (Lagasnerie 2012).

Possible ordoliberal solutions may be explicit restrictions or tax disincentives for forms of remuneration, which encourage short-termism. Thus, the compromise between the European Commission and the EU Parliament about a cap on banker bonuses in February 2013 – limiting the variable part of the salary to one annual salary and two annual salaries in some cases –, while not directly the result of ordoliberal ideas, is largely in line with ordoliberal theory. It has also been contemplated that part of an ordoliberal response is to improve the monitoring power of shareholders (Grüner 2009). Yet, it is not beyond doubt whether this is really consistent with an ordoliberal position because more shareholder power could also increase short-termism if that corresponds to the preference of shareholders.

With respect to the third problem, international financial supervision, as other liberals, ordoliberals would not want to restrict the openness of financial markets. Yet, would they call for more international regulation? The original ordoliberal writings do not point in this direction. For instance, Eucken's book on economic policy, written soon after the Second World War, only identifies the nation state, the scientific community and the churches as the main forces to promote "order" (Eucken 1990, 325-350). Only a short section deals with the "problem of international order". Here it is said that an international monetary order should facilitate cross-border trade. Eucken also refers to a possible need for "forms of international order" but without specifying details (Eucken 1952: 167-9; similarly Röpke 1959 quoted above).

Today's ordoliberals are more positive towards international regulation. For instance, there have been proposals for a "new neo-ordoliberalism as an economic ideal for an international system of competition regulations" (Conrad 2005: 27). It has also been suggested more generally that the globalisation of markets has to be accompanied by an international economic constitution (Aßländer 2011, 59), though this is hardly something original to ordoliberalism (see, e.g., EU Commission 2012, 6: since crisis global, international response needed).

In practice, a number of current initiatives try to provide improved forms of regulation and supervision of international financial institutions and markets, for example through the G20 summits, the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision. Further initiatives for collaborative action can be found in the EU, for example, in establishing a European System of Financial Supervisors in 2011 (as suggested by de Larosière 2009) and in the principal agreement for a Banking Union in December 2012. However, institutional arrangements based on voluntaristic agreements among sovereign states also seem very difficult to establish and hence necessarily limited in scope (see already Röpke 1959 for similar scepticism). In the near future, it is therefore doubtful whether, outside of the EU, such arrangements can obtain an importance similar to domestic legal frameworks in order to guarantee the ordoliberal aims of functioning economic order and individual liberty.

Responses to the Eurozone crisis

In the latter stages of the GFC attention turned to the Eurozone crisis and possible responses, confirming or refuting ordoliberal ideas. A first feature often associated with ordoliberalism is that of "sticking to the rules" and accordingly a rejection of ad-hoc measures. Atkins (2011) suggests that ordoliberal ideas have strongly shaped the German position in the Eurozone sovereign debt crisis:

> "Germany rebuilt its economy from the rubble of the second world war by setting rules on how market forces should work – and sticking to them. Short-term intervention and discretionary government action were rejected. (…) That experience still informs the way the country's mainstream economists approach policy making and a mere European financial crisis is not going to change their way of thinking. Germany continues to press hard for Greece, the region's worst fiscal miscreant, to pay a high price for breaking the rules..(…)"

The mere fact of having rules is not unique to ordoliberalism. But, similar to the aforementioned question of bank bail-outs, it is again the *Haftungsprinzip* and the corresponding problem of moral hazard that are typical for ordoliberal thinking. Thus, measures such as extensive funding of loans via the various stability mechanisms (initially the EFSF and EFSM, now the ESM), bond purchases by the ECB, and the suggestion to turn the ECB into lender of last resort are not in line with ordoliberal principles (e.g., Berghahn and Young 2012, 9; Luckhurst 2012, 746).

Of course, in practice most of the Eurozone countries did not comply with the stability rules, and accession to the Eurozone took a "liberal" approach in applying the convergence criteria. Moreover, as the Eurozone crisis worsened, the need for measures such as emergency loans and ECB bond buybacks was seen as a necessity in order to prevent contagion of the Greek sovereign debt crisis to other Eurozone countries. This experience raises doubts about whether a rigid ordoliberalism can help to address severe financial crises: as Sinn (2011, 267) – in principle, a supporter of ordoliberalism –

expresses it, “ordoliberal recipes [may] serve to protect the jungle from an outbreak of fire”, but they may be “less effective in putting out fires that have already been ignited”.

Secondly, the Eurozone crisis has exposed a split in priorities. On the one hand, there are countries such as Germany whose main focus is on fiscal discipline and price stability, including a limit to the size of sovereign debt (*Schuldenbremse* or “debt-brake”). On the other hand, there is the position that economic growth should be the main priority. Such a pro-growth agenda is pursued by some governments of the political left (e.g., Hollande in France) and it is also apparent in the opposition to austerity measures in Greece, Italy and Spain.

Dullien and Guérot (2012) associate the German position with “the long shadow of ordoliberalism”. To some extent, such reasoning is plausible. While some ordoliberal ideas are close to social-democratic policies (see the previous section), ordoliberalism is against short-term Keynesian responses to economic downturns. Ordoliberals were also keen on emphasising that a stable currency is necessary and some, such as Leonhard Miksch, even suggested that countries should return to a gold standard with fixed exchange rates (see Blum 1969, 79-82).

However, fully equating the German position in the crisis with ordoliberalism is problematic. Assuming a realist position, it is clear that the German government often acts in its national self-interest, for example, in being interested in the success of the German export industry (cf. Young and Semmler 2011) and in appealing to the German electorate (cf. Featherstone 2011, 201). For instance, the European Fiscal Compact, in force since January 2013, was politically important for Germany but it is not officially part of EU law (due to the UK’s “veto”). As Joerges (2013, 15) explains more generally:

> “(T)his type of regime cannot be enforced by conventional legal techniques. It requires a managerial supervisor with discretionary powers who can try to control the unruly interdependencies which we are witnessing and to which we are exposed. This type of arrangement has nothing in common with the ordo-liberal vision of an economic constitution. What we see emerging is a new mode, a delegalized economic constitution.”

Moreover, the use or non-use of Keynesian tools for economic growth too is not only, or even mainly, the result of ordoliberalism. Whether a "Keynesian revival" does or does not happen in practice is often a mere result of politics: for example, the narrow UK elections of 2010 meant that the UK is now in the "austerity camp" but the result could easily have been a different one; and in the EU the complex power relations between the national and European institutions are of crucial importance for economic policies (cf. Luckhurst 2012, 760, 766). Finally, rejection of Keynesian instruments is not a unique feature of ordoliberalism: indeed, the initial ordoliberal writings precede the publication of Keynes's General Theory from 1936 by a few years (e.g., Eucken 1932; Röpke 1923), and many subsequent ones do not show a great deal of interest in the advantages and disadvantages of demand-side economics either.

Conclusion

"Crises, famously, are turning points" (Froud et al. 2012, 44). Yet, change may still be difficult since in times of crisis in particular regulation faces many challenges of coordination and power imbalances (see, e.g., Gieve and Provost 2012; Crouch 2011; Engelen et al. 2011). But, re-considering the statements by Wagenknecht and Ferguson, the attraction of ordoliberalism seems to be that it could be a compromise between different political camps. Such optimism may also be supported by its history since ordoliberals contributed to the re-establishment of a social market economy in post-WW II Germany, without following the more radical path of the Chicago School.

However, Ferguson and Wagenknecht also have in common that they both misunderstand the complexity of ordoliberal ideas. Like certain strands of regulation studies, they mainly look at regulatory regimes in quantitative terms. Thus, what seems to matter is the "amount" of state, for instance, discussing apparent trends such as the "downsizing" of the government, and the "rolling back" of the state. Yet, quantity of laws and regulation of state intervention is not what matters to ordoliberals. For ordoliberals it is clear that achieving their desired state of economic order may require as much regulation as a socialist planned economy. This is not seen as a problem: rather, what is decisive is the nature and substance of such regulations. Ordoliberalism reminds us hence that liberalism does not necessarily have to mean absence or even "minimization" of state intervention in the economy.

Thus, this paper has argued that the main contribution that ordoliberalism can make both to the analysis of the crisis and to possible ways out of it has to do with its more fine-grained understanding of regulation. We have investigated what exactly ordoliberals mean by regulation. We have also discussed that taking this approach allows us to rebuke rhetorical shortcuts that equate everything coming out of Germany with ordoliberalism or use the term merely to claim more space for state intervention in general.

Our analysis of the GFC and its ordoliberal interpretation shows that ordoliberalism does not constitute a panacea, but that it can provide some important lessons. If we accept that one of the main problems of the financial system on the eve of the GFC was the lack of financial market supervision, ordoliberalism's key focus on a strong and interventionist state constitutes an important element that could have put a halt to the bubble before it busted. Other elements of an ordoliberal state too may have had a positive effect on financial stability in the run-up to the crisis: it would have called for more transparency, clearer links between risks and responsibilities and, possibly, other forms of regulation concerning the risk-free use of innovative financial instruments and the problem of destructive incentives in financial markets.

At the same time, ordoliberalism is opposed to discretionary interventionist measures. Such direct intervention on market forces – rather than on the framework for competition – would not be a market-conforming type of state intervention. Thus, bailing out banks or sovereign states is not part of the ordoliberal agenda: rather, ordoliberal regulation focuses on ex-ante conditions, in particular, but not only, as regards the problem of organisations that may become "too big to fail". Having said that, it can also be seen that the ordoliberal rejection of ex-post support for banks and sovereign states has been strongly challenged in the context of the GFC. Thus, again both Wagenknecht and Ferguson get it wrong when they seem to suggest that ordoliberalism is always a relatively uncontroversial middle way.

Ordoliberalism also hints at the limitations of mainstream economic methods. It is frequently suggested that recent events can be interpreted as a failure of mainstream economic methods (e.g., Hodgson 2011; Lawson 2009). Ordoliberalism is more discursive and less technical than the current mainstream and it remains more sceptical of a radical methodological individualism. As it is also a joined endeavour of economists, lawyers, sociologists and political scientists, it provides an example of an interdisciplinary approach to economic phenomena. This also impacts on the way economic regulation is understood: while mainstream economics may often regard regulation as a mere cost factor, ordoliberalism recognises its socio-economic embeddedness, similar to modern approaches of regulation (see, e.g., Baldwin et al. 2010).

Beyond the current crisis, the analysis of the ordoliberal theory of regulation provides us with insights that help solving the "freer markets, more rules" puzzle often referred to in the regulation studies area. From an ordoliberal theory of regulation, this empirical phenomenon does not seem paradoxical as long as the regulation in question is market conforming. The regulatory infrastructure of the market order has always been an integral part of ordoliberalism. Braithwaite (2005, 10) quotes Friedman's statement according to which he realised from the experience of the 1990s that the "rule of law" was probably more fundamental to a liberal economy than privatisation. Braithwaite takes this return to the institutional underpinnings of the liberal market order as a sign of the end of neo-liberalism. But we would suggest that it could equally well be interpreted as the return to its foundations as they were first formulated during the Lippmann Colloquium in 1938 and kept alive in the ordoliberal principles discussed in this paper.

Notes

[1] For a more extensive descriptive treatment of ordoliberalism and related approaches see Schnyder and Siems 2013.

[2] In addition, but beyond the scope of this paper, new forms of liberalism also emerged elsewhere in Europe: see, e.g., Forte and Marchionatti 2012 (for a good discussion of the work by Luigi Einaudi); Ban 2011 (for neoliberal ideas in Spain and Romania).

[3] Note that Miksch specifically referred to monetary policy, while other ordoliberals were more sceptical about an active monetary policy (see Bibow 2009: 174).

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